

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: [REDACTED]	Team: Squad #10	CCRB Case #: 201408513	<input type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Sat, 08/16/2014 1:00 AM	Location of Incident: [REDACTED]	Precinct: 47	S.O.L. Expires: 02/16/2016
Date/Time CV Reported Mon, 08/18/2014 5:09 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 08/18/2014 5:09 PM

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED]
2. [REDACTED]	Victim	[REDACTED]

Witness(es)	Home Address
1. [REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]
3. [REDACTED]	[REDACTED]
4. [REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Nunez	18750	[REDACTED]	047 PCT
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Witness Officer(s)	Shield No	Tax No	Cmd Name
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
[REDACTED]	[REDACTED]	[REDACTED]
B . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez stopped [REDACTED]	B . Substantiated
[REDACTED]	[REDACTED]	[REDACTED]
D . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez entered [REDACTED] in the Bronx.	D . Substantiated
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
H . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez frisked [REDACTED]	H . Substantiated
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
N . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez threatened to arrest [REDACTED]	N . Unsubstantiated
[REDACTED]	[REDACTED]	[REDACTED]
P . POM Daniel Nunez	Discourtesy: PO Daniel Nunez spoke discourteously to [REDACTED]	P . Unsubstantiated
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
S . POM Daniel Nunez	Other: PO Daniel Nunez failed to prepare a stop and frisk report as required by Patrol Guide Procedure 212-11.	S . Other Misconduct
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

### Case Summary

On August 16, 2014, at approximately 1:00 a.m., Mr. [REDACTED] was standing in front of his house, located at [REDACTED] in the Bronx. PO [REDACTED] and PO Daniel Nunez, both from the 47<sup>th</sup> Precinct, stopped their vehicle near Mr. [REDACTED]. Mr. [REDACTED] allegedly grabbed his waistband and ran away from the officers into his house. PO Nunez and PO [REDACTED] followed him (**Allegation B**). Sgt. [REDACTED] Det. [REDACTED] PO [REDACTED] and Lieutenant [REDACTED] all from the 47<sup>th</sup> Precinct, responded. Lieutenant [REDACTED] broke the door to the house open [REDACTED] and Sgt. [REDACTED] PO [REDACTED] PO Nunez, and Lieutenant [REDACTED] entered (**Allegation D**, [REDACTED] Mr. [REDACTED] was in the vestibule. He was handcuffed and PO Nunez frisked him (**Allegation H**). [REDACTED] is a three family house. Ms. [REDACTED] who is Mr. [REDACTED] mother, was in their apartment, located on the third floor, when Lieutenant [REDACTED] and Sgt. [REDACTED] entered and searched the apartment [REDACTED]. She asked if they had a warrant, and Lieutenant [REDACTED] stated that they did not need a “fucking” warrant [REDACTED]. Ms. [REDACTED] asked if she could call her lawyer, and Lieutenant [REDACTED] said she could not use the “fucking” phone [REDACTED]. Lieutenant [REDACTED] threatened to arrest her, but he did not say for what [REDACTED].

Ms. [REDACTED] went to the vestibule of the building where she observed Mr. [REDACTED] handcuffed with three officers surrounding him. PO Nunez, PO [REDACTED] and an unidentified officer were calling Mr. [REDACTED] a “piece of shit” (**Allegations N**, [REDACTED] and were threatening to arrest him (**Allegation P**, [REDACTED]). The officers unhandcuffed Mr. [REDACTED] and left without issuing a summons or arresting anyone.

No Stop, Question, and Frisk Reports were filed in regards to this incident (**Allegation S** [REDACTED]). Det. [REDACTED] PO [REDACTED] and Sgt. [REDACTED] failed to prepare memo book entries for this incident (**Allegations** [REDACTED]).

[REDACTED]

[REDACTED]

### Mediation, Notice of Claim, and Criminal Histories

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### Civilian and Officer CCRB Histories

- [REDACTED]
  - [REDACTED]
- PO Nunez has been a member of service for nine years and has the following CCRB allegations substantiated against him:
  - In 200610674, the board substantiated a stop and a search of a person against PO Nunez to which he pled guilty and lost two vacation days.

- ## Findings and Recommendations
- ### Identification of Subject Officers

### Identification of Subject Officers

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

PO Nunez and PO [REDACTED] both stated that they observed Mr. [REDACTED] in front of [REDACTED]. They both recognized Mr. [REDACTED] from prior drug arrests and from a search warrant that was conducted in his apartment at [REDACTED] in the previous year. They did not suspect Mr. [REDACTED] of committing any crime when they first observed him. PO Nunez walked down his window and asked Mr. [REDACTED] "Hey, [REDACTED] What's going on?" Mr. [REDACTED] put his hand in his pants near the button clasps, turned, and ran inside his house. PO Nunez did not see what he grabbed toward, he did not see any outline or bulge in that area, and he did not have any other reason to suspect Mr. [REDACTED] of possessing a weapon beyond that he grabbed his pants and ran, which he had not done on previous arrests. PO [REDACTED] saw an outline near Mr. [REDACTED] waistband when he grabbed toward his pants, but he could not describe the shape or contours of the outline. He did not have any other reason to suspect that Mr. [REDACTED] possessed a weapon beyond what was described above.

*People v. DeBour* 40 N.Y.2d 210, 215 (Board Review 15) Officers are permitted to stop a person when reasonable suspicion of criminality exists and may conduct a frisk when there is reasonable suspicion to believe that the person is armed.

*People v. Boulware* 130 A.D.2d 370 (App. Div. 1<sup>st</sup> Dep't. 1987)(Board Review 13)  
Knowledge of an individual's criminal past is not tantamount to a present indication of criminal activity. "An officer's surmise as to a person's propensity to commit crime, in the absence of objective indicia that a crime has taken or will be taking place, is an insufficient constitutional predicate." *People v. [REDACTED]* 115 A.D.3d 38 (App. Div. 1<sup>st</sup> Dep't. 2014)(Board Review 17).

*People v. Haynes*, 115 A.D.3d 6767 (App. Div. 2<sup>nd</sup> Dep't. 2014) (Board Review 18) In *People v. Haynes*, the Court held that the defendant's act of looking away from the police and grabbing at his waistband area in such a way that it seemed as if he was holding onto a bulge or something heavy combined with flight was an insufficient basis for police pursuit.

Here, there were no objective facts upon which to found a suspicion that criminal activity was afoot. PO [REDACTED] and PO Nunez provided as justification for their stop of Mr. [REDACTED] that they had firsthand knowledge of his criminal background and that he grabbed his pants and ran from them. Mr. [REDACTED] does not appear to have a history of being arrested for weapons possession. Knowledge of his criminal history alone paired with a single grab toward his waistband without any other determinate observations of an object or bulges did not provide the officers with reasonable suspicion of criminality. Therefore, PO Nunez and PO [REDACTED] were not justified in stopping Mr. [REDACTED]. All of their justifications for the frisk were based upon observation prior to the initiation of the stop. PO Nunez did not have reasonable suspicion to frisk Mr. [REDACTED]. It is therefore recommended that **Allegations B, and H be substantiated.**

[REDACTED]  
[REDACTED]  
**Allegation D—Abuse of Authority: PO Daniel Nunez entered [REDACTED] in the Bronx.**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Ms. [REDACTED] stated that she heard banging on the front door of the building. Her son went to the front door of the building and soon after Lieutenant [REDACTED] and Sgt. [REDACTED] were at her apartment door. She later observed that the door knob to the front door of her building had been broken. After the officers left, she called IAB. LT [REDACTED] responded to her location, and she showed him the damage to the front door.

Lieutenant [REDACTED] stated that he went to [REDACTED] to respond to a call for assistance put over by PO Nunez and PO [REDACTED]. When he arrived, PO Nunez, PO [REDACTED] and Sgt. [REDACTED] were at the front door of the location. Lieutenant [REDACTED] heard a woman yelling on the third floor, but he could not make out what she was saying. PO Nunez informed Lieutenant [REDACTED] that he saw Mr. [REDACTED] run inside the house after putting something in his waistband. The door was locked and Lieutenant [REDACTED] decided to enter the apartment. He decided this as he was worried that the female was being attacked, given what the officers told him and the yelling. He and other officers pushed their weight against the door to open it. He did not remember if the door was broken. Lieutenant [REDACTED] and Sgt. [REDACTED] went to the third floor apartment (see below).

PO Nunez and PO [REDACTED] stated that they entered the building following Mr. [REDACTED]. They entered with PO [REDACTED] before any other officers arrived. They did not hear any woman yelling and they did not see any female civilian at the location. They entered the building in order to stop Mr. [REDACTED] (see above).

Sgt. [REDACTED] stated that PO Nunez and PO [REDACTED] were already in the building before he arrived at the location. He entered the building solely to back up the officers. He did not hear any female yelling and he did not see any female at the location.

PO [REDACTED] and Det. [REDACTED] arrived with Sgt. [REDACTED]. They did not enter the building. PO [REDACTED] heard a female voice from inside the house yelling. Det. [REDACTED]

learned later from Lieutenant [REDACTED] that woman had been heard yelling. Neither PO [REDACTED] nor Det. [REDACTED] saw the officers enter the building.

There was no search or arrest warrant connected with [REDACTED] or Mr. [REDACTED] at the time of the incident (Board Review 17).

Later the same morning, LT [REDACTED] was contacted by the dispatcher and was asked to go to [REDACTED] for an IAB complaint. When LT [REDACTED] arrived he spoke with Ms. [REDACTED]. The door knob to the front door of the building was broken. Ms. [REDACTED] informed LT [REDACTED] that plainclothes officers had entered the building and broke her door.

The investigation is thus crediting that the front door of [REDACTED] was broken and that Lieutenant [REDACTED] PO Nunez, PO [REDACTED] and Sgt. [REDACTED] entered the building.

*People v. McBride* 14 N.Y.3d 440 (Board Review 14) Officers may enter a dwelling without a warrant if they have probable cause to believe the suspect committed a crime and exigent circumstances justify the warrantless entry. In determining whether exigent circumstances are present, the following factors are considered: (1) the gravity or violent nature of the offense; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the subject will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. The ultimate inquiry, however, is whether in light of all the facts of a particular case there is an urgent need justifying the warrantless entry.

As shown above, PO Nunez and PO [REDACTED] did not have reasonable suspicion or, by extension, probable cause to believe that Mr. [REDACTED] had committed a crime or that he was armed. Lieutenant [REDACTED] did not have any other additional information regarding the likelihood that Mr. [REDACTED] was armed beyond their statement. Lieutenant [REDACTED] statement that there was a female yelling added to the exigency of the circumstance. This fact was disputed by Sgt.

[REDACTED] PO Nunez, and PO [REDACTED] who all stated that they were not aware of a female being present for the incident. Even crediting Lieutenant [REDACTED] about the loud dispute in the house, however, he did not have probable cause that Mr. [REDACTED] was engaged in a violent crime nor were the circumstances sufficiently exigent to merit a warrantless entry into [REDACTED]

[REDACTED] It is therefore recommended that **Allegations [REDACTED] D, [REDACTED] be substantiated.**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
**Allegation N—Abuse of Authority: PO Daniel Nunez threatened to arrest [REDACTED]**

[REDACTED]  
**Allegation P—Discourtesy: PO Daniel Nunez spoke discourteously to [REDACTED]**  
[REDACTED]  
[REDACTED]

Ms. [REDACTED] alleged that when Lieutenant [REDACTED] came to her apartment, she asked him if he had a warrant. Lieutenant [REDACTED] responded that he did not need a “fucking” warrant. Ms. [REDACTED] asked if she could use her telephone and Lieutenant [REDACTED] told her that she could not use her “fucking” phone and threatened to arrest her, but did not say for what. When she walked downstairs, she observed PO Nunez, PO [REDACTED] and an unidentified officer (see below) threatening to arrest Mr. [REDACTED] and calling him a “piece of shit.”

No other civilians, including Mr. [REDACTED] cooperated with the investigation (Board Review 06).

Without further evidence the investigation was unable to determine, by a preponderance of the evidence, whether Lieutenant [REDACTED] PO Nunez, and PO [REDACTED] spoke discourteously or threatened to arrest Mr. [REDACTED] or Ms. [REDACTED]. It is therefore recommended that **Allegations** [REDACTED] **N, P,** [REDACTED] be **unsubstantiated.**

[illegible]



**Allegation S—Other Misconduct: PO Daniel Nunez failed to prepare a stop and frisk report as required by Patrol Guide Procedure 212-11.**

PO Nunez and PO [REDACTED] both acknowledged that they stopped Mr. [REDACTED]. PO Nunez acknowledged frisking Mr. [REDACTED]. Both acknowledged not preparing a Stop and Frisk Report and there was not Stop and Frisk Report on the Stop and Frisk Log (board review 16 and Board Review 17).

*Patrol Guide Procedure 212-11* (Board Review 12) states that officers are required to prepare a Stop and Frisk Report whenever they stop and frisk an individual.

PO Nunez and PO [REDACTED] failed to prepare a Stop and Frisk Report for stopping and frisking Mr. [REDACTED]. It is therefore recommended that **Allegations S [REDACTED]** result in **Other Misconduct Noted**.

Pod: 12

Investigator: \_\_\_\_\_ June 9, 2015  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date